



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2014-01]

Paroling, Recommitting and Supervising Federal Prisoners

Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY : United States Parole Commission, Justice

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Parole Commission proposes to revise its rules pertaining to decisions to revoke terms of supervision without a hearing. Specifically, we propose a rule that would allow a releasee charged with only administrative violations or specifically identified misdemeanor crimes to apply for a prison sanction of 8 months or less. If a releasee qualifies and applies for a sanction under this section, the Commission may approve a revocation decision that includes no more than 8 months of imprisonment without using its normal guidelines for decision-making.

DATES: Submit Comments on or before [insert date 60 days after date of publication in the Federal Register.

ADDRESSES: Submit your comments, identified by docket identification number USPC-2014-01 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments .
2. Mail: Office of the Case Operations, U.S. Parole Commission, attention: Stephen J. Husk, Case Operations Administrator, 90 K Street, N.E., Washington, D.C. 20530.
3. Fax: (202) 357-1086.

FOR FURTHER INFORMATION CONTACT: Stephen J. Husk, Case Operations Administrator U.S. Parole Commission, 90 K Street, N.E., Washington, D.C. 20530, telephone (202) 346-7061. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission is responsible for paroling those federal and District of Columbia offenders serving parole-eligible sentences and for monitoring the supervision of paroled offenders and D.C. offenders whose sentences require supervised release after serving their prison terms. When determining how much prison time should be imposed when revoking a term of parole or supervised release, the Commission applies guidelines for its decision-making. There are two aspects of the offender's behavior/history used to guide the Commission in determining how much prison time to impose. First, we consider the severity of the current violations of supervision based on an eight level severity index. In addition, the Commission applies a "salient factor score" to aide in determining the risk of potential violations of supervision. The salient factor score is based on six items related to the offender's record of past criminal convictions, supervision history and age.

For persons who have not violated the law while on supervision but fail to comply with one or more of the other conditions ordered by the Commission, the severity of the non-criminal violation is treated the same as the lowest level law violation on our severity index. Prior to January of 2012, the Commission had no special procedures to sanction non-criminal violations differently or to consider an offender's acceptance of responsibility for the violation behavior into its decision-making.

In January of 2012, the Commission initiated a pilot project (Short-Term Intervention for Success) for persons arrested in the District of Columbia on USPC warrants who had committed only non-criminal violations of parole or supervised release. The project was also extended to persons re-arrested for minor crimes similar to those that the Commission does not usually consider as "prior convictions" when assessing its Salient Factor Score. Those persons approved for participation in the pilot project were not sanctioned in accordance with the Commission's customary guidelines. Instead, the Commission imposed a prison sanction not to exceed 8 months. To be considered for this shorter sanction, the offender was required to (1) promptly accept responsibility for the violations and; (2) agree to modify the non-compliant behavior to successfully complete any future period of supervision.

When the Short-Term Intervention for Success (SIS) pilot project started in the District of Columbia, its purpose was to determine whether shorter period of confinement could achieve swifter resolution of revocation matters at reduced costs to various criminal justice agencies without jeopardizing public safety.

When the SIS project started, the total number of prisoners confined in the District of Columbia on Commission warrants exceeded 700. Many of those prisoners were being held solely on administrative (i.e. non-criminal) violations of supervision. As of June 23, 2014, the total population was 416.

The prison population for parole/supervised release violators in the District of Columbia has been reduced, in large part, due to the shorter and swifter sanctions imposed via the SIS project. A study of 828 administrative violators who were sanctioned prior to the start of the SIS project showed that they were confined, on average, for 11 months. Of the 889 persons that were sanctioned during the SIS project (through June 30, 2014), the average sanction was 3.4 months. This 69% reduction in length of prison terms has had significant impact on the prison population and the costs associated with incarceration. Because prisoners were accepting responsibility for the violations at a probable cause hearing, the SIS project also resulted in a faster resolution to revocation matters and thus a reduction of the time spent of various agencies in preparing for and attending revocation hearings.

At the Commission's request, an evaluation of the SIS project was completed by Dr. James Austin and Dr. Calvin Johnson in May of 2013. This evaluation showed that, after serving the shorter periods of incarceration, persons that participated in SIS had not been re-arrested at a rate greater than the sample of 828 that received the longer prison sanctions prior to SIS.

The SIS program achieved its goals of swifter resolution of administrative violations, shortening the prison stays for lower level violations and saving costs to various law enforcement agencies and public defender offices. Based on the analysis completed in the May 2013 evaluation, it has done so with no negative impact on recidivism.

Because the majority of the parole and supervised release violators are arrested in the District of Columbia (and its proximity to Commission headquarters), the SIS pilot project was extended only to administrative violators in the District of Columbia. However, there is also a smaller number of prisoners confined each year on Commission warrants outside the District of Columbia (both federal and D.C) who have committed non-criminal violations similar to those who participated in the SIS program and have similar criminal backgrounds.

Section 2.66 already allows for the Commission to make a revocation decision without a hearing in certain instances. The proposed rule would expand that section to create a special procedure for those that commit only non-criminal violations of supervision or very minor crimes. The proposed rule extends the procedure to persons arrested outside the District of Columbia by allowing an offender to apply for the reduced sanction at a preliminary interview (i.e. probable cause proceeding conducted by a U.S. Probation Officer outside of the District of Columbia). In addition, it expands the scope of misdemeanor crimes that will be treated as administrative violations under this section to include arrests for possession of an illegal drug or drug paraphernalia for personal use only. The Commission has always sanctioned positive drug tests as an administrative violation. The proposed rule would allow an offender that is arrested in possession of an illegal drug for personal use (or paraphernalia indicating personal use) to be

sanctioned similarly to an offender that uses an illegal drug and then tests positive for that substance.

Under the proposed rule, Commission retains its discretion to disapprove an offender for a sanction under this section if we believe that case specific factors indicate that resolving the matter under the normal revocation procedures is more appropriate. In addition, the proposed rule includes a departure from our normal policy that an offender whose supervised release is revoked will receive another term of supervised release that is equal in length to the maximum term authorized by the law. Specifically, for these minor types of violations, the proposed rule allows for the Commission to impose a shorter period of supervised release if we believe that a shorter period of supervision adequately addresses the offender's needs without putting the public at risk.

Executive Order 13132

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. §605(b).

Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E-Congressional Review Act)

These rules are not "major rules" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E-Congressional Review Act, now codified at 5 U.S.C. §804(2). The rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term "rule" as used in Section 804(3)(C) now codified at 5 U.S.C. §804(3) (C). Therefore, the reporting requirement of 5 U.S.C. §801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Proposed Rules

Accordingly, the U.S. Parole Commission proposes to adopt the following amendment to 28 CFR Part 2.

28 CFR part 2- [AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. §4203(a)(1) and 4204(a)(6)

2. Add paragraph (d) to §2.66 to read as follows:

§2.66 Revocation Decision Without a Hearing

(d) Special Procedures for Swift and Short-Term Sanctions for Administrative Violations of supervision: (1) An alleged violator may, at the time of the probable cause hearing or preliminary interview, waive the right to a revocation hearing and apply in writing for an immediate prison sanction of no more than 8 months. Notwithstanding the reparole guidelines at Section 2.21, the Commission will consider such a sanction if:

- (i) The releasee has not already postponed the initial probable cause hearing/preliminary interview by more than 30 days;
- (ii) The charges alleged by the Commission do not include a violation of the law(*);
- (iii) The releasee has accepted responsibility for the violations ;
- (iv) The releasee has agreed to modify the non-compliant behavior to successfully complete any remaining period of supervision and;
- (v) The releasee has not already been sanctioned pursuant to this paragraph.

(2) A sanction imposed pursuant to paragraph (d)(1) of this section may include any other action authorized by Sections 2.105 or 2.218.

(3) Notwithstanding the general policy at 2.218(e), a decision to revoke a term of supervised release made pursuant to paragraph (d)(1) of this section may include a further term of supervised release that is less than the maximum authorized term.

(4) Any case not approved by the Commission for a revocation sanction pursuant to paragraph (d)(1) of this section shall receive the normal revocation hearing procedures including the application of the guidelines at 28 C.F.R. Section 2.21.

*Note to paragraph (d): For purpose of paragraph (d)(1) only, the Commission will consider the sanctioning of the following crimes as administrative violations if they have been charged only as misdemeanors:

- 1.Public Intoxication
- 2.Possession of an Open Container of Alcohol
- 3.Urinating in Public
- 4.Traffic Violations
- 5.Disorderly Conduct/Breach of Peace
- 6.Driving without a License or with a revoked/suspended license
- 7.Providing False Information to a Police Officer
- 8.Loitering
- 9.Failure to Pay court ordered support (i.e. child support/alimony)
- 10.Solicitation/Prostitution
- 11.Resisting Arrest
- 12.Reckless Driving
- 13.Gambling
- 14.Failure to Obey a Police Officer
- 15.Leaving the Scene of an Accident (only if no injury occurred)-
- 16.Hitchhiking
- 17.Vending without a License
- 18.Possession of Drug Paraphernalia (indicating purpose of personal use only)
- 19.Possession of a Controlled Substance (for personal use only)

Dated: July 30, 2014.

Cranston J. Mitchell
Vice Chairman, U.S. Parole Commission

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